

Application No. 10/654,413  
Attorney Docket No. 15047US01

**REMARKS**

The present application includes claims 1-17, 19-23 and 37-44. All of the claims were rejected. By this Amendment, claims 3 and 14 have been canceled, claims 1, 5-6, 9-10, 12, 16-17, 20-21, and 37-41 have been amended.

Claims 1-17, 19-23 and 37-44 were rejected under 35 U.S.C. §112, first paragraph as non-enabling because the claims do not recite that the particulate layer is an impact dampening layer formed from rubber particulate. Independent claims 1, 12, and 37-41 have been amended to add the limitation identified by the Examiner.

Claims 3, 6, 9, 10, 12, 14, 17, 20, and 21 were rejected under 35 U.S.C. §112, second paragraph as indefinite. Claims 3 and 14 have been canceled. Claims 6, 9, 10, 12, 17, 20, and 21 have been amended to fix antecedent basis issues and other clarity issues.

Claims 1-4, 7-8, 10-12, 14-15, 19, 21-23, 38, and 39 were rejected under 35 U.S.C. §102(b) as being anticipated by Unterstenhoefer, U.S. Patent No. 3,446,122.

Claims 1-4, 7-8, 10-15, 19, 21-23, and 38-39 were rejected under 35 U.S.C. §102(b) as being anticipated by Thelen, U.S. Patent No. 4,564,310.

Claims 5-6, 9, 16-17, 20, 37, and 40-44 were rejected under 35 U.S.C. §103(a) as being unpatentable over Thelen.

The Applicant now turns to the rejection of claims 1-4, 7-8, 10-12, 14-15, 19, 21-23, 38, and 39 under 35 U.S.C. § 102(b) as being anticipated by Unterstenhoefer. Unterstenhoefer

Application No. 10/654,413  
Attorney Docket No. 15047US01

teaches elastic surfaces for sportsgrounds, playgrounds, and footpaths. More specifically, Unterstenhoefer teaches a surface made up of several layers. For example, as shown in Figure 5, the surface includes a filter layer 1 made up of gravel or sand, an elastic subbase 2 made up of polystyrene and vinyl copolymer, a layer of stone chippings 7, and a solid covering layer 8. Similarly, the example of Figure 6 includes an elastic subbase made of polystyrene and a urea-formaldehyde condensate and the example of Figure 7 includes polystyrene and isobutylene.

However, Unterstenhoefer does not teach a layer of unbound rubber particulate. Instead, Unterstenhoefer either teaches that the particulates are bound or that the particulates are a substance other than rubber.

Independent claims 1, 12, 38, and 39 have been amended to recite an unbound rubber particulate, which is respectfully submitted to not be taught by Unterstenhoefer. Consequently, independent claims 1, 12, 38 and 39, and their respective dependent claims 2-4, 7-8, 10-11, 14-15, 19, and 21-23 are respectfully submitted to be allowable.

The Applicant now turns to the rejection of claims 1-4, 7-8, 10-15, 19, 21-23, and 38-39 under 35 U.S.C. § 102(b) as being anticipated by Thelen. Thelen teaches a surface including a soil covering layer composed of a mineral aggregate, a layer of fibrous scrap vulcanized rubber particles, a core composition of rubber particles bound with rubber latex, and a topping layer of rubber particles bound with zinc and rubber latex.

Thelen does not teach a plurality of layers of unbound rubber particles. The only layer in Thelen that could be construed as unbound is the layer of fibrous scrap vulcanized rubber

Application No. 10/654,413  
Attorney Docket No. 15047US01

particles. All of the other layers of Thelen are either not composed of rubber or are bound. Further, even if Thelen did teach two layers of unbound rubber particles, Thelen does not teach that the two layers are composed of rubber particles of different sizes.

Consequently, independent claims 1, 12, and 38-39 have been amended to include the limitation of a second layer of unbound rubber particles and that the second layer includes rubber particles of a different size. This limitation is respectfully submitted to not be taught by Thelen, but is supported by the layers of coarse particulate and fine particulate in the present application. Consequently, independent claims 1, 12, and 38-39 are respectfully submitted to be allowable, as are their dependent claims 2-4, 7-8, 10-11, 13-15, 19, and 21-23.

The Applicant now turns to the rejection of claims 5-6, 9, 16-17, 20, 37, and 40-44 under 35 U.S.C. §103(a) as being unpatentable over Thelen. However, although Thelen teaches that the depth of various layers may be altered from a first installment, as recited in Example 1, to a second installment, as recited in Example 2. Thelen does not teach that the depth of a layer may be varied inside a single installment. Specifically, Thelen does not teach varying the depth of a layer inside a single installment in order to provide additional impact dampening.

This limitation is recited in independent claims 37, 40-44, as well as dependent claims 5-6, 9, 16-17, and 20. Consequently, claims 5-6, 9, 16-17, 20, 37, and 40-44 are respectfully submitted to be free of Thelen and allowable.

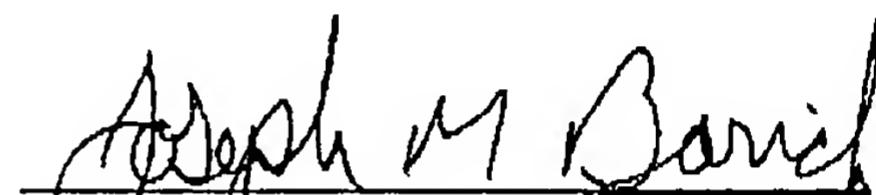
Application No. 10/654,413  
Attorney Docket No. 15047US01

**CONCLUSION**

If the Examiner has any questions or the Applicant can be of any assistance, the Examiner is invited and encouraged to contact the Applicant at the number below.

The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

  
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